

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 3349 of 1988****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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KASHIRAM DEVIRAM THORUGH HEIRSMADHUBEN KASHIRAM - Petitioner(s)
Versus
BHIMJIBHAI RANABHAI & 1 - Respondent(s)

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Appearance :

MR MB GANDHI for Petitioner(s) : 1,
RULE UNSERVED for Respondent(s) : 1,
Shri Dipen Desai, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 22/09/2005****ORAL JUDGMENT**

In this petition under Article 227 of the Constitution of India the petitioners have challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 22.3.1988 in Revision Application No. TEN.B.A. 481/84

in allowing the said revision application and remanding the matter to the Mamlatdar & ALT to take further action in terms of Section 84-C of The Bombay Tenancy and Agricultural Lands Act, 1948.

2. The dispute is with regard to land bearing Survey No. 1133/3/2 Paiki admeasuring 23 gunthas/1600 sq.yds. situate at Naroda, Taluka-City and the same was given on lease for 99 years to one Bhimjibhai Ranabhai, respondent No.1 herein. As it was found that the said transaction was in breach of Section 63 of The Bombay Tenancy and Agricultural Lands Act, 1948 ["the Tenancy Act" for short] the Mamlatdar and ALT by order dated 24.5.1968 declared the transaction between the parties as illegal and in breach of Section 63 of the Tenancy Act and directed to restore the original position within the period of 3 months on receipt of the order by the parties. It appears that the respondent No.1 preferred an appeal against the said order which came to be allowed by the City Deputy Collector by order passed in Appeal No. 42 of 1970 and the matter was remanded to the Mamlatdar for fresh enquiry as he was not given opportunity of being heard. The Mamlatdar initiated fresh inquiry and found that the transaction was not in accordance with the provisions of Sections 63 and 64 of the Act as the land in question did not fall within the definition of "land" as per Section 2(8) of the Tenancy Act. Tenancy Appeal No. 21 of 1974 was preferred against the order dated 30th March 1974

passed by the Mamlatdar in Tenancy Case No. 266/73 and the City Deputy Collector, by his order dated 31st March 1975 allowed the said appeal and held that the transaction was in contravention of Section 63 of the Tenancy Act and directed to restore the original position and to hand over the possession within the period of 3 months failing which the said land shall vest in the Government free from all encumbrances. Revision Application No. 370 of 1975 was filed before the Gujarat Revenue Tribunal by the respondent No.1 and the said revision application came to be dismissed on the ground of limitation. It appears that thereafter the Mamlatdar issued notice dated 3.2.1976 to the parties to show cause why the transaction should not be held to be in contravention of Sections 63 and 64 of the Act and why the said land should not be ordered to be entered in the name of the Government. The petitioner appeared before the Mamlatdar in reply to the notice and the original landowner Kashiram Deviram also appeared before the Mamlatdar and filed his reply on 5.3.1986 wherein he contended that the original position was restored by deleting the name of the respondent No.1 from the Village Form No. 7/12 and in fact the land in question was already in his possession from the very beginning and he had never parted with the possession. The Mamlatdar, considering the fact that the the original position was already restored and that the original landowner was found to be in possession, closed the proceedings by order dated 8.10.1976. Being aggrieved and dissatisfied with the

order dated 8.10.1976, the respondent No.1 herein preferred Tenancy Appeal No. 67 of 1976 before the City Collector, who dismissed the same by order dated 13.7.1977. Being aggrieved and dissatisfied with the order passed by the City Deputy Mamlatdar dated 13th July 1977 in Tenancy Appeal No. 67 of 1976, the respondent No.1 preferred Revision Application being Revision Application TEN.B.A. No. 481/84 before the Gujarat Revenue Tribunal and the Tribunal by judgment and order dated 22nd March 1988 taking a too lenient view allowed the said revision application by holding that the original landowner and the parties had not given undertaking as required under Section 84-C and quashed and set aside the order passed by the Mamlatdar and City Deputy Collector directing the Mamlatdar & ALT to take further action under Section 84-C of the Act by holding that the parties have not restored possession of the land to the position in which it was immediately before the said transaction. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 22nd March 1988 in Revision Application TEN.B.A. No. 481/84, the heir of original landowner Kashiram Deviram has preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. The learned advocate appearing on behalf of the petitioner has vehemently submitted that when it is specifically found by all the authorities and even

by the Gujarat Revenue Tribunal that the original landowner was in possession of the land in question after the order was passed by the Mamlatdar meaning thereby the position which was prevalent prior to the transaction was restored the Gujarat Revenue Tribunal was not justified in holding that there is breach of Section 84-C of the Tenancy Act, i.e., to say that position is not restored as no undertaking was given by the parties. It is submitted by the learned advocate for the petitioner that the view taken by the Gujarat Revenue Tribunal is too technical and that the Tribunal has not properly considered the object of Section 84-C of the Tenancy Act more particularly the provision with regard to restoring the position which was prevalent prior to the transaction which was declared to be illegal. It is therefore requested to allow the present Special Civil Application.

4. Shri Dipen Desai, learned AGP has tried to support the judgment and order passed by the Gujarat Revenue Tribunal has tried to support the judgment and order passed by the Gujarat Revenue Tribunal, however, he is not in a position to dispute that in fact the petitioner and the original landowner was found to be in possession of the land in question, i.e., the position which was prevalent prior to the transaction was restored.

5. Heard the learned advocates appearing for the parties. It is not in dispute that the

petitioner and/or the original landowner was found to be in possession of the land in question after the order came to be passed by the Mamlatdar and ALT declaring the transaction as invalid and in breach of Section 63 of the Tenancy Act meaning thereby the position which was prevalent prior to the transaction was restored. The Gujarat Revenue Tribunal has taken a too technical view to the effect that the parties have not given the undertaking and that nothing has been shown how the possession was handed over to the original landowner within 3 months. The fact remains that the original landowner was found to be in possession and the same is evident from the Panchnama drawn. Therefore, merely because the undertaking was not given, solely on this ground alone it cannot be held that the position of the land is not restored. What is required is that the position which was prevalent prior to the transaction should have been restored within the period of 3 months, meaning thereby the possession should have been with the original landowner within the period of 3 months. Under the circumstances, the reasoning given by the Gujarat Revenue Tribunal is contrary to the main object and the purpose of Section 84-C of The Bombay Tenancy and Agricultural Lands Act, 1948, and the same cannot be sustained.

6. For the reasons stated above, the petition succeeds. The Judgment and Order passed by the

Gujarat Revenue Tribunal in Revision Application TEN.B.A. No. 481/84 dated 22nd March 1988 is hereby quashed and set aside and the orders passed by the Mamlatdar and ALT and the City Deputy Collector, quashing the proceedings are hereby restored. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

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